

REMARKS

Claims 1-4, 16, 17, and 19-22 remain pending in the instant application. Claims 5-10, 14, 15, and 23-25 are cancelled without prejudice. Entry of this amendment and consideration of the pending claims are respectfully requested.

Provisional Election

Applicants hereby provisionally elect Species A directed toward Figure 1 with traverse and reserve the right to petition this restriction requirement. Claims 1-4, 16, 17, and 19-22, are readable on Species A and therefore are provisionally elected with traverse.

Amendment

To advance prosecution, Applicants hereby cancel claims 5-10, 14, 15, and 23-25 without prejudice.

Restriction Requirement

The Examiner has required a restriction of the claims between a Species A illustrated by FIG. 1, a Species B illustrated by FIG. 2, a Species C illustrated by FIG. 3, and a Species D illustrated by FIG. 6. Applicants traverse the selection of figures 1, 2, 3, and 6 as illustrating distinct species. Figures 1, 2, 3, and 6 do not illustrate multiple distinct species.

Claims restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations **disclosed only for the second species and not the first**. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

M.P.E.P. § 806.04(f) (emphasis added). This section provides the general test of when claims should be restricted as different species. This test requires that “one claim recites limitations which under the disclosure are found in a first species **but not** in a second...” FIG. 1 illustrates an optical communication system while FIGs. 2, 3, and 6 each illustrate in greater detail a different sub-component first illustrated in FIG. 1. Accordingly, FIGs. 2, 3, and 6 do not illustrate mutually exclusive elements from the

embodiment illustrated in FIG. 1; rather, these Figures illustrate components that are **used in connection with** (not exclusive of) the embodiment illustrated in FIG. 1.

FIG. 1 illustrates the interrelationship between a central station 103, a level A Mux station 111, and level B Mux stations 113. FIG. 2 illustrates the central station 103 in greater detail, FIG. 3 illustrates the level A Mux station 111 in greater detail, and 6 illustrates the level B Mux station 113 in greater detail. Accordingly, FIGs. 2, 3, and 6 illustrate the same subject matter illustrated in FIG. 1 but varying in breadth and scope.

Applicants further note that there is “a serious burden on the examiner if restriction is required.” M.P.E.P. § 803. “If the search and examination of an entire application can be made without serious burden, the examiner **must** examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. § 803 (emphasis added). **Applicants note that the Examiner has issued eight previous Office Actions without claiming a serious burden or issuing a restriction requirement.** Applicants are confused as to why the Examiner is now claiming for the first time that a serious burden exists. Generally, an Election/Restriction requirement “will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner.” M.P.E.P. 811.

Applicants note that the Examiner has already issued a Final Rejection on May 22, 2002.

The “Examiner **must provide reasons** and/or examples to support conclusions.” M.P.E.P. § 803 (emphasis added). The Examiner has provided no reason why the claims should be restricted along the figures selected or why a search and examination of the claims as a group would result in a “serious burden” on the Examiner. However, as noted above, Applicants hereby cancel claims 5-10, 14, 15, and 23-25 without prejudice so as to advance prosecution.

Favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

CHARGE DEPOSIT ACCOUNT

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: April 5, 2005



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